

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

DONALD R. ADKINS,

Petitioner,

v.

ROBERT JEFFREYS,

Respondent.

CASE NO. 2:04-cv-1094

JUDGE MARBLEY

MAGISTRATE JUDGE KEMP

ORDER

Petitioner has filed a request for clarification of this Court's *Opinion and Order*, August 24, 2006, Doc. No. 56. Petitioner's request for clarification is **GRANTED**. Clarification is provided as follows:

On August 9, 2006, the United States Court of Appeals for the Sixth Circuit remanded petitioner's appeal to this Court for the limited purpose of treating petitioner's May 2, 2006, notice of appeal from the March 15, 2006, order denying petitioner leave to proceed on appeal in *forma pauperis* and denying his motion to reconsider or reopen his 28 U.S.C. §2254 action as a motion under Federal Rule of Appellate Procedure 4(a)(5) for extension of time to file the appeal. *See* Doc. No. 54. As discussed, petitioner's May 2, 2006, notice of appeal was untimely, and absent an order granting petitioner an extension of time to file the notice of appeal, the appeal may have been dismissed on that basis.

Therefore, pursuant to the remand from the United States Court of Appeals, this Court construed petitioner's untimely May 2, 2006, notice of appeal as a request for an extension of time to file an appeal under Federal Rule of Appellate Procedure 4(a)(5). The Court granted petitioner's request for an extension of time to file the notice of appeal. However, the Court denied any request

for a certificate of appealability made under the May 2, 2006, notice of appeal under the standard set forth in *Slack v. McDaniel*, 529 U.S. 473, 483 (2000).

The Court also denied petitioner's request for a stay of proceedings, Doc. No. 55, as moot.

The foregoing is a clarification of the *Opinion and Order*, August 24, 2006, Doc. No. 56, made at petitioner's request.

/s/ Terence P. Kemp
United States Magistrate Judge